IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 792 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVIND RAMJI MISHRA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 792 of 2003

MR ANIL S DAVE for MR CHETAN B RAVAL for Petitioner

MS HARSHA DEVANANI, AGP for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 21/05/2003

ORAL JUDGEMENT

1. The petitioner - detenu, by filing this petition, has challenged the order of detention passed by the Commissioner of Police, Ahmedabad City dated 13.11.2002 detaining the petitioner as a dangerous person as per Sub-Section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter be referred

to as the "PASA Act"] on several grounds. On the very same day, the detaining authority has also passed committal order directing the detenu to be detained at District Jail, Junagadh. The order of detention was served on the detenu in Jail itself when the detenu was in judicial custody for the offences registered against him. The grounds of detention and other materials which were considered by the detaining authority were also served on the detenu at the time of executing the order of detention. The detaining authority, while considering the material placed before him, has recorded satisfaction that the activities of the petitioner is prejudicial to the maintenance of public order and from the material considered by him, shows that the detenu is a dangerous person, as defined under Section 2(c) of the PASA Act. The grounds of detention reflects that the petitioner was involved in two criminal cases registered at Rakhiyal Police Station. The first case, was registered vide C.R.No.71/2002 on 01.08.2002 for the offences punishable under Sections 328, 427 and 114 of Indian Penal Code and another case was registered vide C.R.No.72/2002 on 02.08.2002 for the offences punishable under Sections 328, 379 and 114 of the Indian Penal Code. The first case was pending before the trial Court and the another case was under investigation. In addition, the detaining authority has also considered two statements of the witnesses recorded by the police on 09.11.2002 and the same were verified by the detaining authority on 11.11.2002 and the order of detention was passed on 13.11.2002. From the two statements of the witnesses recorded by the police and verified by the detaining authority disclosed about the incident narrated by the witnesses in which the witnesses have suffered because of the prejudicial activities of the petitioner and on a particular date, the public order in the area was disturbed. The detaining authority has, while considering the material placed before him by the sponsoring authority in respect of the criminal cases registered against the petitioner and the statements of the witnesses and the panchnama carried out by the Investigating Agency were considered and furnished the same to the detenu. As found from the two statements of the witnesses recorded by the police, the witnesses have because of the fear at the instance of the detenu, not filed any complaint in respect of the said incident before the police. As the witnesses have requested not to disclose their names and addresses, as if their names are disclosed, their lives and properties will be in danger at the instance of the detenu. The detaining authority has personally verified the statements of the witnesses, by calling these two witnesses and the

detaining authority has also accepted the version given by the witnesses and claimed privilege by not disclosing their names and addresses. However, in the grounds of detention, the incident met by the witnesses at the instance of the accused were highlighted and full statements of the witnesses were furnished to the detenu withholding their names and addresses. As found from the grounds of detention, the detaining authority has recorded satisfaction that the petitioner is acting prejudicial activities to the maintenance of the public order and the petitioner detenu is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to prevent such activities, he was satisfied that the order of detention under PASA Act was necessary and the order of detention was passed. It is further found from the satisfaction recorded by the detaining authority, in the grounds of detention, that in the first criminal case registered against the detenu, he is in judicial custody and in the second criminal case, the detenu had moved an application for bail to the trial Court and the same came to be rejected by the trial Court and accordingly the detaining authority was aware that the detenu is in judicial custody and the detaining authority has further observed that the detenu is, at any time, applied for bail before the Competent Court and on granting the bail, he will continue such prejudicial activities again and it was necessary to prevent such act and accordingly, the order of detention under PASA Act was passed.

2. Mr.A.S.Dave, learned advocate for the petitioner has, while arguing the matter, placed in service only one ground for setting aside the order of detention as the detaining authority has not applied his mind at the time of passing the order of detention. In para-10, it is the contention raised by the petitioner that the petitioner is in judicial custody and this fact is also reflected in the grounds of detention. However, the satisfaction recorded by the detaining authority that the petitioner will apply for bail and on getting the bail from the the Competent court, he will continue with such prejudicial activities and detaining authority was of the view that the detenu may file an application for bail and possibility of coming out on bail, totally without any material and it shows non-application of mind and in absence of such application and when the detaining authority aware that the detenu is in judicial custody, on filing application, he may release on bail and he will continue in acting the prejudicial activities to the maintenance of public order, is absolutely without any application of mind and on that ground, the order of

detention passed by the detaining authority, is required to be quashed and set aside.

3. Ms.Harsha Devanani, learned AGP for the respondents has supported the order of detention passed by the detaining authority and according to her, the contentions raised by the petitioner are not well founded and further that the detaining authority has rightly recorded satisfaction on considering the material placed before him, which shows that the detenu is a dangerous person within the meaning of Section 2(c) of the PASA Act and the activities of the petitioner shows that he is acting prejudicial to the maintenance of the public order and with a view to prevent such activities, the order of detention was passed and the same be confirmed. Ms.Devanani has also taken me through the affidavit-in-reply filed by Shri K.R. Kaushik, Commissioner of Police, Ahmedabad City and according to her, the order of detention be confirmed by dismissing the petition.

4. In the reply affidavit filed by Shri Kaushik, in reply to para-10 of the petition, it is the say of the detaining authority that the contention raised in para-10 is denied. He has further averred that it is obligatory on the part of the detaining authority to consider lesser drastic remedy as enunciated in the various statements of this Hon'ble Court. Further he has considered the alternative steps which might be taken under relevant provisions of the Bombay Police Act, 1951. However, the activities of the petitioner could not be immediately prevented by resorting to the externment proceedings and as a last resort the order of detention came to be passed.

5. Mr.Dave, learned advocate for the petitioner has placed reliance upon the decision in the case of Amritlal & other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 S.C. 3675 as well as the judgment in the case of Navghan alias Amit Punjabhai Vs. Commissioner of Police, while deciding Special Civil Application No.262 of 2003. Relying upon the ratio in the above two cases, the contentions raised by Mr.Dave found to be well founded. The satisfaction recorded by the detaining authority that though the detenu is in judicial custody, he will move the application for bail and he may release on bail, he will again continue such prejudicial activities, is without any material and only on this grounds, the petition is allowed. The impugned order dated 13.11.2002 passed by the Commissioner of Police, Ahmedabad City is quashed and

set aside. The detenu Shri Arvind Ramjibhai Mishra is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[D. K. Trivedi, J.]
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